

U. S. House of Representatives
Washington, D. C. 20515

May 13, 2015

The Honorable Tom Wheeler, Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Dear Chairman Wheeler,

As champions for reforming the video marketplace, we're writing to express our support for the FCC's proposal to update the "effective competition" provision of the 1992 Cable Television Consumer Protection and Competition Act.

According to a recent estimate by SNL Kagan, retransmission consent fees are expected to increase from \$4.9 billion to \$9.3 billion by the end of the decade.¹ Recognizing the increased fees and the frustrations of consumers with rising monthly service bills, during the previous Congress we respectively introduced H.R. 3719, the *Video CHOICE Act* and H.R. 3720, the *Next Generation Television Marketplace Act*.

The introduction of these bills reflected our belief that consumers should benefit from a truly balanced marketplace in which rules and regulations do not limit consumer choice or force them to buy certain tiers of channels before they can buy anything else. Unfortunately, one of the impediments to enhanced flexibility and choice comes from legacy regulations that were written at a time when most consumers had just one choice for video programming. Over the past 20 years, we've seen the addition of two national satellite video providers as well as the entry of incumbent telephone providers into the video business. As a result of this enhanced competition, today 99 percent of American homes have access to at least three pay-TV providers.²

We are also sensitive to the time-consuming and costly requirements that the "effective competition" provision places on cable operators, particularly small cable companies operating in rural areas. To date, the FCC has already granted effective competition petitions covering over 10,000 communities, and the FCC has approved 99.5 percent of all the petitions filed since 2013.³ By adopting a rebuttable presumption, cable operators will not have to engage in long and costly proceedings to offer subscribers more flexible packaging options or engage in pro-consumer pricing practices, such as offering certain discounts and they will incur fewer costs that will ultimately be passed on to consumers. Moreover, by reforming the petition process which occupies extensive FCC time and resources, the FCC could save taxpayer dollars.

¹ Multichannel News, *Kagan: Retrans Fees Rise to \$9.3B By 2020* (October 27, 2014).

² *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* at Table 2, Federal Communications Commission (Adopted: March 31, 2015).

³ *Notice of Proposed Rulemaking in the Matter of Amendment to the Commission's Rules Concerning Effective Competition* at Footnote 4, Federal Communications Commission (Adopted: March 16, 2015).

478
MB
Consumer
Retransmission

We hope this will be the first of many common sense steps taken by the Commission to ensure its rules reflect today's video marketplace. Thank you for your continued efforts to promote healthy competition, consumer choice and continued innovation across the video marketplace.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Anna Eshoo', with a large, stylized flourish extending from the end.

Anna G. Eshoo
Member of Congress

A handwritten signature in blue ink that reads 'Steve Scalise' in a cursive, flowing script.

Steve Scalise
Member of Congress



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2015

The Honorable Anna G. Eshoo
U.S. House of Representatives
241 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Eshoo:

Thank you for your letter expressing your support for the Commission's proposal to update its implementation of the Effective Competition provision of the 1992 Cable Television Consumer Protection and Competition Act (the 1992 Cable Act).

The proposal being considered by the Commission reflects the changes in the video marketplace that you describe and that Congress envisioned when establishing its definition for Effective Competition in the 1992 Cable Act. Prior to the passage of the 1992 Act, incumbent cable operators had approximately a 95 percent market share of multichannel video programming distributor (MVPD) subscribers. Satellite television was not yet an option, and phone companies had just begun to offer video programming to consumers. Congress sought to encourage new entrants into the marketplace and established standards¹ for determining when local franchising authorities could, in the absence of Effective Competition, choose to step in and regulate cable rates.

The nationwide presence of DIRECTV (which provides local broadcast channels to 197 markets representing over 99 percent of U.S. homes) and DISH Network (which provides local broadcast channels to all 210 markets), alongside the significant number of direct broadcast satellite (DBS) subscribers (34.2 million or 33.9 percent of MVPD subscribers)² and subscribers (11.3 million) who receive their video programming through Verizon, AT&T, or other Local Exchange Carriers, demonstrate the changed realities of marketplace. As a result, the FCC has granted Effective Competition petitions in over 10,000 communities thus far, resulting in an approval rate of more than 99.5 percent of the communities evaluated since 2013.

¹ The statute defines four types of Effective Competition: Competing Provider Effective Competition, Low Penetration Effective Competition, Municipal Provider Effective Competition, and Local Exchange Carrier (LEC) Effective Competition. Only a presumption of Competing Provider Effective Competition is at issue in this proceeding. The statutory test for the type of Effective Competition at issue in the proposed Order is satisfied if the franchise area is "(i) served by at least two unaffiliated [MVPDs] each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by [MVPDs] other than the largest [MVPD] exceeds 15 percent of the households in the franchise area." 47 U.S.C. § 543(l)(1).

² *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, 30 FCC Rcd 3253, 3256, ¶ 2, and 3300-01, ¶¶ 112-113 (2015) ("16th Annual Video Competition Report").

I share your concern that continued adherence to outdated regulations causes particular harm to small cable operators, which often serve communities overlooked by larger providers. In proposing a rebuttable presumption that cable systems are subject to Competing Provider Effective Competition as defined by Congress, the item reflects the current marketplace, while preserving a role for local franchising authorities that demonstrate a lack of competitive options for consumers.

I appreciate your interest and support in this matter, and your views will be included in the record of the proceeding for the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,



Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 3, 2015

The Honorable Steve Scalise
U.S. House of Representatives
2338 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Scalise:

Thank you for your letter expressing your support for the Commission's proposal to update its implementation of the Effective Competition provision of the 1992 Cable Television Consumer Protection and Competition Act (the 1992 Cable Act).

The proposal being considered by the Commission reflects the changes in the video marketplace that you describe and that Congress envisioned when establishing its definition for Effective Competition in the 1992 Cable Act. Prior to the passage of the 1992 Act, incumbent cable operators had approximately a 95 percent market share of multichannel video programming distributor (MVPD) subscribers. Satellite television was not yet an option, and phone companies had just begun to offer video programming to consumers. Congress sought to encourage new entrants into the marketplace and established standards³ for determining when local franchising authorities could, in the absence of Effective Competition, choose to step in and regulate cable rates.

The nationwide presence of DIRECTV (which provides local broadcast channels to 197 markets representing over 99 percent of U.S. homes) and DISH Network (which provides local broadcast channels to all 210 markets), alongside the significant number of direct broadcast satellite (DBS) subscribers (34.2 million or 33.9 percent of MVPD subscribers)⁴ and subscribers (11.3 million) who receive their video programming through Verizon, AT&T, or other Local Exchange Carriers, demonstrate the changed realities of marketplace. As a result, the FCC has granted Effective Competition petitions in over 10,000 communities thus far, resulting in an approval rate of more than 99.5 percent of the communities evaluated since 2013.

³ The statute defines four types of Effective Competition: Competing Provider Effective Competition, Low Penetration Effective Competition, Municipal Provider Effective Competition, and Local Exchange Carrier (LEC) Effective Competition. Only a presumption of Competing Provider Effective Competition is at issue in this proceeding. The statutory test for the type of Effective Competition at issue in the proposed Order is satisfied if the franchise area is "(i) served by at least two unaffiliated [MVPDs] each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by [MVPDs] other than the largest [MVPD] exceeds 15 percent of the households in the franchise area." 47 U.S.C. § 543(i)(1).

⁴ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Sixteenth Report, 30 FCC Rcd 3253, 3256, ¶ 2, and 3300-01, ¶¶ 112-113 (2015) ("16th Annual Video Competition Report").

I share your concern that continued adherence to outdated regulations causes particular harm to small cable operators, which often serve communities overlooked by larger providers. In proposing a rebuttable presumption that cable systems are subject to Competing Provider Effective Competition as defined by Congress, the item reflects the current marketplace, while preserving a role for local franchising authorities that demonstrate a lack of competitive options for consumers.

I appreciate your interest and support in this matter, and your views will be included in the record of the proceeding for the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized flourish extending from the end.

Tom Wheeler